1946

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON BANKING AND COMMERCE

to whom was referred the Bill A-5, intituled:
"An Act respecting Bankruptcy."

No. 1

WEDNESDAY, MAY 22, 1946

CHAIRMAN

The Honourable Elie Beauregard, K.C.

WITNESS:

Mr. W. J. Reilley, K.C., Superintendent, Bankruptcy Act Administration, Department of Secretary of State.

OTTAWA
EDMOND CLOUTIER
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1946

ORDER OF REFERENCE

EXTRACT from the Minutes of Proceedings of the Senate for 13th May, 1946.

Pursuant to the Order of the Day, the Honourable Senator Robertson moved that the Bill (A-5), intituled: "An Act respecting Bankruptcy", be now read a second time.

After debate, and—

The question being put on the said motion.

It was resolved in the affirmative.

Ordered, That the said Bill be referred to the Standing Committee on Banking and Commerce.

L. C. MOYER,
Clerk of the Senate.

STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable ELIE BEAUREGARD, K.C., *Chairman*

The Honourable Senators

Aseltine	Euler	Marcotte
Aylesworth, Sir Allen	Fallis	McGuire
Ballantyne	Farris	McRae
Beaubien (Montarville)	Foster	Michener
Beauregard	Gershaw	Molloy
Buchanan	Gouin	Moraud
Burchill	Haig	Murdock
Campbell	Hardy	Nicol
Copp	Hayden	Paterson
Crerar	Howard	Quinn
Daigle	Hugessen	Raymond
David	Jones	Riley
Dessureault	Kinley	Robertson
Donnelly	Lambert	Sinclair
Duff	Leger	White
DuTremblay	MacDonald (Cardigan)	Wilson—(48).

MINUTES OF EVIDENCE

THE SENATE,

OTTAWA, Wednesday, May 22, 1946.

The Standing Committee on Banking and Commerce to whom was referred Bill A-5, an Act respecting Bankruptcy, met this day at 11 a.m.

Hon. Mr. FARRIS (Acting Chairman) in the Chair.

The Acting CHAIRMAN: Mr. Reilley, the last time you were here you dealt with the question of decentralization, and we will secure that from you in more detail later. Do you recall what further headings you dealt with?

Mr. W. J. REILLEY, K.C. (Superintendent of the Bankruptcy Act Administration): I mentioned the intended changes in regard to compositions.

The Acting CHAIRMAN: Part II of the bill.

Mr. REILLEY: Yes, beginning with section 11.

The Acting CHAIRMAN: This is so important, gentlemen, that I think we had better start all over again.

Hon. Mr. HAIG: All right.

Hon. Mr. MORAUD: I suppose you will have a certain number of copies of this report printed?

The Acting CHAIRMAN: Perhaps you would make a motion.

Hon. Mr. MORAUD: I would make a motion that a thousand copies of the proceedings be printed in English and four hundred copies in French.

The Acting CHAIRMAN: Are you agreeable, gentlemen?

Some Hon. MEMBERS: Carried.

The Acting CHAIRMAN: Part II, Mr. Reilley begins at page 13 and runs to page 24. It deals with composition, extension or scheme of arrangement. You might state to us what are the existing factors as to compositions and then give us the essential changes.

Hon. Mr. ASELTINE: Would this be similar to the provisions of the Farmers Creditors' Arrangement Act?

Mr. REILLEY: In some respects.

Hon. Mr. ASELTINE: That is the objection that most of us have to the proposed changes.

Mr. REILLEY: The present law is that a proposal for composition can only be made after bankruptcy occurs. Originally when the Act was passed in 1919 a composition could be offered before bankruptcy by any man in financial embarrassment. He could get his creditors together, and if the proposal was approved it went to the court, and then it became binding on all the creditors. That was eliminated in 1923 by reason of the fact that there was so much dishonesty connected with these proposals, with no method of checking up or appraisal to find out whether they were fair or not. So after that time if a man wanted to make a proposal to his creditors he had first to go into bankruptcy. I think all of you know that bankruptcy of itself almost inherently depreciates the possibility of a proposal going through. At once bankruptcy depreciates a man's assets by a very considerable percentage, and consequently when it gets to that stage the possibility of making a proposal and getting it through is much less, and also his own chances of carrying the proposal through have been very much affected.

The Acting CHAIRMAN: What are the changes you propose should be made?

Mr. REILLEY: The change I propose is merely to permit any person under the Act to make a proposal with his creditors before bankruptcy.

Hon. Mr. MORAUD: That is to restore the 1919 conditions.

Mr. REILLEY: Yes. The trouble with the original Act of 1919 was that there was no way of checking on the debtor. If he could conceal or cheat his creditors, there was no way of getting at whether or not he was doing so. Where you have a body of creditors acting together like that no one of them just wants to take the necessary steps to delve into the situation sufficiently to find out what the facts are.

Hon. Mr. EULER: How do you propose to guard against that now?

Mr. REILLEY: By the fact that the proposal has to be made to a licenced trustee, who will be required to make an appraisal and investigation of the debtor's affairs and report to the creditors at the meeting.

Hon. Mr. MORAUD: You have not that safeguard now.

Mr. REILLEY: I think it is about the only safeguard you can find. I do not know of any other one that could be inserted. In those days of course trustees were a very different type of men from the trustees of to-day, who, generally speaking, I think are pretty honourable men.

The Acting CHAIRMAN: You explained to us at the last meeting that in 1932 two changes were made in the Act. One was to provide for a superintendent in the set-up. That is yourself.

Mr. REILLEY: Yes.

The Acting CHAIRMAN: And the second was, you were given power to licence trustees annually.

Mr. REILLEY: Yes.

The Acting CHAIRMAN: You have power to revoke or refuse licences.

Mr. REILLEY: Yes.

Hon. Mr. HAIG: And the trustees are bonded.

Mr. REILLEY: Yes, they are bonded.

The Acting CHAIRMAN: You have had an experience of thirteen or fourteen years in building up an organization of licensed trustees.

Mr. REILLEY: Yes.

Hon. Mr. ASELTINE: Are these trustees usually trust companies?

Mr. REILLEY: Well, all of the trust companies have licences, but the majority of them have very few bankruptcy cases. Most of the bankruptcy cases are handled by private trustees.

Hon. Mr. MORAUD: I understood you to say at the last meeting that trustees might be influenced by the debtor. After all, the debtor goes to the trustee first, the creditors come afterwards; so the trustee is the debtor's man instead of the creditors'. Are you not afraid that in a case of a composition like this the trustee might work more for the debtor than for the creditors?

Mr. REILLEY: Well, that was the opinion held in regard to trustees generally, that they always acted for the debtor. But I think most trustees today are pretty well aware of the fact that if they lend themselves to any shady scheme, and I find any inkling of it, they know just about where they stand.

Hon. Mr. EULER: What greater protection have the creditors if the debtor has to go through bankruptcy proceedings than they will have if this trustee is empowered to go and ascertain all the assets?

Mr. REILLEY: None whatever.

Hon. Mr. HAIG: Yes. Under bankruptcy you can examine the debtor under oath.

Mr. REILLEY: He can be examined under oath at the meeting of creditors if you want it. I have just forgotten whether I have that in or not, but you could put that in.

Hon. Mr. EULER: So that protection would be as great under your proposal as in bankruptcy?

Mr. REILLEY: Yes.

Hon. Mr. HAIG: In bankruptcy if creditors think the debtor has assets which he has not disclosed they can have him examined under oath.

The Acting CHAIRMAN: Once the debtor submits himself to the trustee under the new section the same procedure would follow.

Hon. Mr. HAIG: It was not so in 1919.

Mr. REILLEY: I answer that question by this section that I have put in the bill.

The Acting CHAIRMAN: Which is it?

Mr. REILLEY: Section 13:

> "If the creditors by a ten per cent vote of those voting in person or by proxy at the meeting"—

I have put that down to 10 per cent, which is a sufficiently low percentage to give them the right to a further investigation.

Hon. Mr. HAIG: 10 per cent in value or in number?

Mr. REILLEY: Any creditor by proxy or in person may vote.

The Acting CHAIRMAN: It is number, not value.

Mr. REILLEY: Yes, number, not value. This is the new section 13.

> (1) If the creditors by a ten per cent vote of those voting in person or by proxy at the meeting at which a proposal is being considered so require the meeting shall be adjourned to such time and place as may be fixed by the chairman,
>
> (*a*) to enable such further appraisal and investigation of the affairs and property of the debtor to be made as may be deemed advisable in which case the information thereby obtained shall be incorporated in a report and placed before the adjourned meeting or may be read in court on the application for approval of the proposal.
>
> (*b*) for the examination under oath of the debtor or of such other person as may be believed to have knowledge of the affairs or property of the debtor as elsewhere provided in this Act. The testimony of the debtor or such other person, if transcribed, shall be placed before the adjourned meeting or may be read in court upon the application for the approval of the proposal.
>
> (2) The court if not satisfied with the report or the testimony of the debtor or such other person may direct that such further investigation be made as it may deem advisable or that the debtor or such other person attend before the court for further examination.

Hon. Mr. EULER: I am not a lawyer, but after all this is only common sense. You say the creditors would have the same protection by the appointment of a trustee as they would have if the debtor went into bankruptcy?

Mr. REILLEY: I think so.

Hon. Mr. EULER: They would not labour under any of the defects of bankruptcy?

Mr. Reilley: That is the idea.

Hon. Mr. Aseltine: But the trustee has no power to examine the debtor under oath prior to the meeting of creditors.

Mr. Reilley: No, he has no power to examine under oath. I have there given him the duty of making an appraisal. He is expected to do that reasonably well.

Hon. Mr. Moraud: We should give more power to the court, so as not to leave the position entirely in the hands of the trustee.

Mr. Reilley: My opinion is that they should go first to the court for leave to file a proposal, but I wanted to get away from too many technicalities and too much formality. I thought that with the system of trustees we have to-day they could be relied on generally to give pretty fair protection to the creditors. As I said before, as long as the trustee is just not living up to the requirements, he has to answer to me at the end of the year, and some have found that a pretty hard testing.

Hon. Mr. Moraud: I have in mind a case of dishonesty. If a man comes to me for advice. I as a lawyer am inclined to help him out; and the trustee is in about the same position. The debtor goes to him for advice and says, "I am in a bad fix. What can I do about it?" The trustee, of course, is inclined to help him out. Sometimes helping the debtor out would not be in the best interests of the creditors. So I am wondering whether it would not be better for the trustee and everybody else concerned if in all cases the registrar or the court were given authority as to final approval of any proposal.

Mr. Reilley: Every proposal, even if approved by the creditors, has to go before the court for approval, and every creditor has a right to appear there.

Hon. Mr. Haig: Mr. Reilley, we have had this whole procedure in proceedings in my province under the Farmers Creditors' Arrangement Act. The registrar is always on the side of the debtor, and you have great difficulty in getting him even to admit that the assets are worth more. In Saskatchewan he started on the theory that the debtor was right 100 per cent and the creditors were wrong 100 per cent, and he valued the farm at about a quarter or a half or a third of what it was worth, and you could not get away from that. That is what we are scared about in regard to these provisions.

Mr. Reilley: I do not know, senator, that any law could be set up to remedy bias on the part of the court, and if a registrar or anybody else—

Hon. Mr. Haig: That is the tendency under the Farmer Creditors' Arrangement Act. I am only one, but I shall not let this bill go through and have perpetrated on the creditors of this country what the Farmers Creditors' Arrangement Act has perpetrated on the creditors of Manitoba and Saskatchewan. Your system is the same.

Mr. Reilley: No.

Hon. Mr. McGuire: There is the superintendent over the trustee here; there is not over the registrar in the other case.

Mr. Reilley: There is one of your answers. There is no intervening authority under the Farmers Creditors' Arrangement Act to see that the duties to be performed under the Act are performed properly.

Hon. Mr. Aseltine: Would not the trustee under these proceedings be in the same position as the official receiver under the Farmers Creditors' Arrangement Act?

Mr. Reilley: No.

Hon. Mr. Aseltine: As Senator Haig has stated, the Official Receiver is 99 per cent of the time on the side of the farmer debtor.

MINUTES OF PROCEEDINGS

THURSDAY, 16th May, 1946.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.30 a.m.

Present: The Honourable Senator Beauregard, Chairman; The Honourable Senators Ballantyne, Buchanan, Campbell, Copp, Crerar, Dessureault, Donnelly, Euler, Fallis, Farris, Foster, Gershaw, Haig, Hugessen, Lambert, Léger, Macdonald (*Cardigan*), McGuire, McRae, Molloy, Moraud, Murdock, Paterson, Robertson, Sinclair, White and Wilson—28.

Bill A.5—"An Act respecting Bankruptcy", was read and considered.

Mr. W. J. Reilley, K.C., Superintendent, Bankruptcy Act Administration, Department of Secretary of State, was heard in explanation of certain features of the Bill.

Further consideration of the Bill was postponed.

At 12.55 p.m., the Committee adjourned to the call of the Chairman.

ATTEST.

R. LAROSE
Clerk of the Committee.

WEDNESDAY, 22nd May, 1946.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11 a.m.

Present: The Honourable Senator Farris, Acting Chairman; The Honourable Senators Aseltine, Ballantyne, Buchanan, Copp, Crerar, Daigle, Dessureault, Duff, DuTremblay, Foster, Gouin, Haig, Hayden, Kinley, Lambert, Léger, Macdonald (*Cardigan*), McGuire, Molloy, Moraud, Paterson, Robertson and Sinclair.—25.

In attendance: The Official Reporters of the Senate.

Mr. J. F. MacNeill, Law Clerk and Parliamentary Counsel of the Senate.

The Honourable Senator Farris was appointed Acting Chairman, and took the Chair.

Bill A-5—"An Act respecting Bankruptcy", was again considered.

Mr. W. J. Reilley, K.C., Superintendent, Bankruptcy Act Administration, Department of Secretary of State, was again heard.

On Motion of the Honourable Senator Moraud, seconded by the Honourable Senator Aseltine, it was,—

RESOLVED, to report to the Senate recommending:—That the Committee be authorized to print 1,000 copies in English and 400 copies in French of its day to day proceedings on the Bill A-5, intituled: "An Act respecting Bankruptcy," and that Rule 100 be suspended in relation to the said printing.

At 1 p.m., the Committee adjourned until Tuesday, 28th instant, at 10.30 a.m.

ATTEST.

R. LAROSE,
Clerk of the Committee.

Mr. REILLEY: Yes, I know. I have not any comments to make on the Farmers Creditors' Arrangement Act. I was opposed to it very violently when it went through, and I am still.

Hon. Mr. ASELTINE: But you are incorporating a great deal of the same procedure in this bill.

Mr. REILLEY: My idea of this, gentlemen, is that bankruptcy in itself is destructive.

Hon. Mr. HAIG: We agree with you there.

Mr. REILLEY: This is the only procedure that I have ever heard of whereby you can proceed in this way. In England the procedure is this: a receiving order is made—it is not an adjudication of bankruptcy, but just an interim order—and after that is made the Official Receiver makes an investigation of the debtor's affairs and examines him; then it comes to the creditors' meeting, and at that meeting he is asked, Are you willing or ready to make a proposal to your creditors. There is not any bankruptcy yet. There is an order, to be sure, saying he has committed an act of bankruptcy, but everybody has who gets into that position. At the meeting of creditors if no composition is proposed, they go back to the court and get an adjudication of bankruptcy—what they call an adjudication order. So there are two orders, and then the intervening period when the debtor is given an opportunity to make a composition.

Hon. Mr. ASELTINE: Under this bill who prepares the proposal, the trustee?

Mr. REILLEY: It would be prepared by the debtor, I suppose.

The ACTING CHAIRMAN: Is there any particular reason why the condition Senator Haig mentioned would be applicable to farmers, but might not be generally applicable to ordinary business?

Hon. Mr. HAIG: What I am afraid of is this. No one creditor wants to make a row, because he thinks the debtor may get on his feet again and may be a good outlet for business. I am not afraid of the 75 or 85 or even 99 per cent of people who are honest; it is the dishonest debtor I am worried about beating his creditors. You do think that in 1919 it was rampant?

Mr. REILLEY: Yes.

Hon. Mr. HAIG: I know about that, for we had a big practice in bankruptcy proceedings at that time.

Mr. REILLEY: All I can say is it was rampant between 1919 and 1923. The changes after that did not remedy the situation very much until 1932. Before that period, you know, dishonesty was very rampant, but from 1932 on you have not heard very much about dishonesty in bankruptcy.

Hon. Mr. HAIG: I admit that.

Mr. REILLEY: Whether the superintendent's control is entirely responsible for that I am not going to say; I leave it to the public to judge. That control has effected a very considerable remedy of the situation.

Hon. Mr. HAIG: Of course, your 10 per cent vote is a very fine provision; that gives the kickers a pretty good show.

Hon. Mr. MCGUIRE: The whole purpose of the Farmers Creditors' Arrangement Act was to provide a new deal for the debtor, and the creditors knew right from the beginning that their interests were going to be sacrificed to a great extent at least.

Mr. REILLEY: Yes.

Hon. Mr. MCGUIRE: That Act was only intended to be temporary. Why Senator Haig's province and the other western provinces want to hang on to it is their own business.

Hon. Mr. HAIG: We do not want it.

The ACTING CHAIRMAN: Your legislature asked for it back.

Hon. Mr. McGuire: The whole object of the Farmers Creditors' Arrangement Act was entirely different from the Bankruptcy Act.

Mr. Reilley: Entirely.

Hon. Mr. McGuire: I think the proposed arrangement in this bill sounds very good. The debtor must get some consideration; the creditors are not the only ones to be taken into account.

Hon. Mr. Euler: The composition arrangement under this bill is a protection to the creditors themselves by reason of the fact that the trustee can make the same investigation as can be made under bankruptcy proceedings. I do not see why we should not give the debtor an opportunity to escape bankruptcy and so save depreciation of his assets, so long as the creditors are justly protected.

Hon. Mr. Moraud: This is altogether in favour of the debtor.

Mr. Reilley: I would not go that far, senator. I have had a lot of experience doing nothing but bankruptcy work for twenty-four years, and after all the majority of people are honest.

Hon. Mr. Moraud: There is no doubt of that.

Mr. Reilley: Many debtors may get into financial embarrassment and want to make an honourable proposal for the benefit of themselves and their creditors as well.

Hon. Mr. Euler: Though the debtor may be dishonest, the trustee is supposed to be honest and he protects the creditors.

Mr. Reilley: In section 11 I have put it this way:—

> (2) Proceedings for a proposal by a debtor shall be commenced before bankruptcy as filing with a licensed trustee, and after bankruptcy by filing with the trustee of the estate,
>
> (*a*) a copy of the proposal in writing embodying the terms of the proposed composition, extension or scheme of arrangement, and setting out the particulars of any securities or sureties proposed, signed by the debtor and the proposed sureties, if any;
>
> (*b*) a statement, verified by affidavit, showing the cause of the debtor's financial difficulties, the reason for the proposal, and the grounds of the debtor's belief that the proposal is fair and reasonable and can be carried out.

Hon. Mr. Haig: The debtor had to do the same thing under the Farmers Creditors' Arrangement Act. The difficulty is the valuation of the assets. Under your proposal the debtor says he owns a store in the village and a farm out in the country. He has so much stock on the farm and so much goods in the store, and he puts his valuation on those. The question arises right there, whether his valuation is proper. Who checks that valuation?

Mr. Reilley: The trustee.

Hon. Mr. Euler: Has not the trustee power to go in and examine the debtor under oath?

Hon. Mr. Aseltine: Only the creditors can decide whether there shall be an examination.

Mr. Reilly: Subsection 4 of section 11 deals with the duties of the trustees:—

> (4) The trustee shall make or cause to be made such an appraisal and investigation of the affairs and property of the debtor as to enable him to estimate with reasonable accuracy the financial situation of the debtor and the cause of the debtor's financial difficulties or insolvency, and report the result thereof to the meeting of the creditors. A copy of the report shall as soon as completed be mailed to the Superintendent.

Hon. Mr. ASELTINE: Then if a meeting takes place 10 per cent of the creditors may require the debtor himself to be examined.

Mr. REILLEY: Or ask for a further investigation.

Hon. Mr. HAIG: What percentage of the creditors have to approve of the compromise?

Mr. REILLEY: Seventy-five per cent.

Hon. Mr. HAIG: In value and number both?

Mr. REILLEY: No. "A majority in number of all the creditors, or of any class thereof, with proven claims of $25 or over, and holding three-quarters in amount of all such proven claims of creditors or class of creditors, as the case may be, in so far as the proposal affects any such class, present in person or by proxy, resolve to accept the proposal as made"—a majority of 75 per cent.

Hon. Mr. HAIG: In my experience I would get 75 per cent in amount because some of the bigger creditors would be only too anxious to carry on the business, and the little creditors would get squeezed to death. I would say it should be 75 per cent in amount and 75 per cent in number—both.

Mr. REILLEY: Well, this is the provision found I think in virtually every Act of Bankruptcy. I do not think you will find as high a percentage as you have suggested.

Hon. Mr. MORAUD: Number and value ought to be fair enough.

Hon. Mr. HAIG: Value does not help you much; it is the number.

Mr. REILLEY: The proposal has to be accepted by a majority of the creditors. After all, the majority rules.

Hon. Mr. ASELTINE: The bulk Sales Act of each province provides for a similar percentage in number and amount as suggested by Senator Haig. It works out very well.

Mr. REILLEY: This is a majority of all the creditors holding 75 per cent of all the claims.

Hon. Mr. MORAUD: I think it is fair enough.

Hon. Mr. HAIG: It is what gives you the trouble.

The ACTING CHAIRMAN: But you have to get a majority in number and also 75 per cent in value. That is pretty drastic.

Hon. Mr. HAIG: If you made it 75 per cent in number and 50 per cent in value this would be all right.

The ACTING CHAIRMAN: Then you might get a few of the small fellows bought off at 100 per cent. I suggest that we do not spend too much time on the details. We want to get the general picture.

Hon. Mr. HAIG: Certainly.

Hon. Mr. KINLEY: Is there anything on preferred creditors?

Mr. REILLEY: That is dealt with further on in the bill when we come to distribution.

The ACTING CHAIRMAN: This composition question is also dealt with at page 23. What are the changes in that respect?

Mr. REILLEY: In the case of a corporation, where a proposal has been before the creditors and has not been approved, the corporation can apply to the court to appoint a committee.

The ACTING CHAIRMAN: What section is that?

Mr. REILLEY: Section 23 at page 21. The Committee will investigate the affairs of the corporation, hear representations from any persons and it will then try to formulate a proposal and that proposal is submitted to the creditors or shareholders as the case may be, for their approval.

The Acting Chairman: That committee is not necessarily composed of creditors?

Mr. Reilley: Not necessarily. It is presumed to be an independent committee.

Hon. Mr. Haig: Who appoints them?

Mr. Reilley: The court.

Hon. Mr. Moraud: Suggested by the corporation or by whom?

Mr. Reilley: I have not said by whom. I have left it to the court to appoint a committee that it feels would be qualified to act in such a case.

The Acting Chairman: The court, I take it, could in its discretion ask all interested parties to make suggestions?

Hon Mr. Moraud: The court might accept representations from the corporation?

Mr. Reilley: I do not think the court would pay too much attention to that—I do not think a judge in Montreal would. He would be very much inclined to say: "Is this man independent in the matter?" I think that is the attitude most judges would take.

Hon. Mr. Aseltine: Then the committee may formulate a proposal?

Mr. Reilley: And that goes back to all the creditors again.

Hon. Mr. Haig: And if they reject it?

Mr. Reilley: Then the corporation can apply to the court itself to formulate a proposal. Then if the court, after hearing the report of the committee and the representations of all interested parties, is of the opinion that it is in the public interest by reason of the nature of the services rendered or the business carried on that a proposal should be formulated, it can proceed to do so and put it into effect.

Hon. Mr. Moraud: Don't you think that procedure is rather vague?

Mr. Reilley: There has first been a meeting of creditors to consider the proposal put forward. That is the first stage. The second stage is that they can apply to the court for a committee.

Hon. Mr. Moraud: The corporation does.

Mr. Reilley: The corporation. Then if that scheme fails, if nothing comes from it, they can apply to the court if it is in the public interest, because there are many corporations, as you know, which, while they are private corporations are actually operating in the public interest.

Hon. Mr. Euler: By what percentage of the creditors can the committee's report be rejected, 75 per cent?

Mr. Reilley: The same percentage. You have a substantial majority in order to bind the rest of the creditors or shareholders, as the case may be. It is an important section. I may say, gentlemen, that I have adopted the idea largely from the corporate organization proposals of the United States Bankruptcy Act, which extended the provisions for dealing with reorganizations.

The Acting Chairman: I think, Mr. Reilley, the most contentious part of your whole proposal is subsection 10 of section 23. You ought to go into that fully with this committee.

Mr. Reilley: I do not know, Mr. Chairman, that there is much more that I can add to that. That is just a scheme. As I say, every person who is interested has an opportunity to come before the court and be heard. That is expressly stated.

The Acting Chairman: Let me read the last six lines of subsection 10:—

> The court may by order formulate a proposal of composition modifying or altering the rights of creditors or shareholders or any class of them

and providing for the issuance of such new securities or shares or other evidence of title or interest therein as may be necessary to carry out the terms and formalities of the proposal.

That is where the teeth are in this bill. The teeth may work both ways. That, I take it, Mr. Reilley, means that the rights of secured creditors, bondholders and debentureholders, may be affected.

Mr. REILLEY: Yes.

Hon. Mr. HAIG: That is going pretty far.

Mr. REILLEY: It is and it is not. You have to consider the fairness of the court in protecting all the interests as far as it can be equitably done.

Hon. Mr. HAIG: Let me illustrate, Mr. Reilley. Here is what happened under the Farmers Creditors' Arrangement Act, which contains a similar provision. A farmer, the owner of a half section of land, had mortgaged it to some company, he owed money to the bank and to the storekeeper, and he was in default with his municipal taxes. Now, as everybody knows, taxes are a first charge. The Judge satisfied the taxes or part of them. Then he set aside the mortgage and gave the bank and the merchant, who were unsecured creditors, rights in the estate. That destroyed the mortgage security. When the first mortgage on a half section worth $5,000 is as high as $8,000 there may be some justification for cutting that down to $5,000, but I can never see any justification for cutting it down to $3,000 and letting the bank and the other unsecured creditors jump in. You are doing virtually the same thing here.

Hon. Mr. MORAUD: I am very much against leaving everything to the discretion of the judge. One man can say to the bondholders: "Now, you will get only so much, and you shareholders, who should not get anything, you will divide the assets with the bondholders." I do not think we should leave that to the discretion of one man.

Mr. REILLEY: Subsection 10 of section 23 can of course be separated from the rest of the section. I admit it was put in there as a last resource. I felt that was the tendency and that there should be some final resource to get at a settlement of certain very difficult, intricate and involved matters. But, I repeat, subsection 10 is not a necessary part of the section.

Hon. Mr. ASELTINE: Is that copied from the United States Act?

Mr. REILLEY: No, it is purely a device of my own mind.

Hon. Mr. MORAUD: Don't you think the experience we have had under the Farmers Creditors' Arrangement Act has been very unsatisfactory? As you know, some of the judges ignored the Act in trying to be equitable.

Mr. REILLEY: I don't like to comment on the operation of another Act of Parliament because—

Hon. Mr. MCGUIRE: The Farmers Creditors' Arrangement Act was intended to be an Act of confiscation, and that is what it was.

Hon. Mr. MORAUD: This is exactly the same thing.

Hon. Mr. MCGUIRE: No. This is to make the best arrangement for both the debtor and the creditors.

Hon. Mr. MORAUD: It is confiscation of the rights of the bondholders.

Hon. Mr. MCGUIRE: Confiscation is the spirit of the Farmers Creditors' Arrangement Act. That is why under it you can take an $8,000 mortgage and cut it down to $3,000. That was never intended in the Bankruptcy Act.

Hon. Mr. EULER: It can be done under this provision.

Hon. Mr. MCGUIRE: No. What is more, can you think of any better man to rely on for the exercise of discretion than a judge with his experience and ability?

Hon. Mr. MORAUD: No; but I prefer to rely on law rather than discretion.

Hon. Mr. HAIG: I don't think Senator McGuire has had the experience of some or us western fellows with the operation of the Farmers Creditors' Arrangement Act.

Hon. Mr. MCGUIRE: No. You people out there must like it or you would not want to keep it.

Hon. Mr. HAIG: There are more debtors than creditors—

Hon. Mr. MCGUIRE: All over.

Hon. Mr. HAIG: —so it is easy to decide on the side of the debtor.

Hon. Mr. KINLEY: And the creditor is an absentee.

Hon. Mr. HAIG: Let me give an illustration. I had a second mortgage of $1,000 on a piece of land at Marquette. The first mortgage was for the full value of the property. I lacked experience at that time or I would not have taken the second mortgage. The judge threw $1,000 off the mortgage and said I was to get $75 on my mortgage. So I got my $75 at the expense of the first mortgagee.

Mr. REILLEY: You must not forget, senator, that the preamble to the Farmers Creditors' Arrangement Act was very different altogether from the preamble to the Bankruptcy Act. The object and purpose of that Act was to keep men on the farm.

Hon. Mr. MCGUIRE: Right.

Mr. REILLEY: That was the first object.

Hon. Mr. ASELTINE: Is not the object of the Bankruptcy Act to keep men in business? The same thing.

Mr. REILLEY: They went at it in a different way.

Hon. Mr. KINLEY: Is not the object to protect creditors?

Mr. REILLEY: Yes.

The ACTING CHAIRMAN: That should be the general object of the Act. I think, Mr. Reilley, we had better read the provision in this section.

> —if in its opinion it is desirable and expedient in the interest of the corporation, the creditors and the shareholders or in the public interest by reason of the nature of the services rendered or the business carried on—

That widens the usual purposes of the Bankruptcy Act.

Hon. Mr. MORAUD: And discretion is left to the court. One man can decide whether it is expedient, and so on.

The ACTING CHAIRMAN: I think, Mr. Reilley, you intimated to us that you do not think subsection 10 an essential part of your scheme.

Mr. REILLEY: Oh, no.

The ACTING CHAIRMAN: It will work without that in?

Mr. REILLEY: It would work without that in if Parliament sees fit to delete that.

The ACTING CHAIRMAN: What would you think about the advisability of going a little slowly, trying the general scheme without that subsection, and if it was working well you could incorporate that a little later.

Mr. REILLEY: Well, that is an idea.

Hon. Mr. KINLEY: What is it in for?

Mr. REILLEY: My idea was to make the scheme complete.

Hon. Mr. EULER: You are really making it possible for one man, the judge, to set aside preferred rights, say, of bondholders to the advantage of other creditors: is not that so?

Mr. REILLEY: You can I suppose put it that way if you like, but I am assuming that the courts are going to deal fairly and equitably with all concerned.

Hon. Mr. EULER: But it is all left to the judgment of one man.

Mr. REILLEY: All rights depend on the judgment of one man in the last analysis.

Hon. Mr. GOUIN: You are leaving everything to the absolute discretion of the judge as to the rights of the creditors, and in the exercise of that discretion he could set aside certain civil rights.

The ACTING CHAIRMAN: Have you considered the effect this would have on future large borrowings on securities?

Mr. REILLEY: I have, and my candid opinion would be that it would not affect borrowers in any way whatsoever, because the cases where this section would be applied would not be one in ten thousand.

Hon. Mr. EULER: Then why put it in?

Mr. REILLEY: As I say, I put it in to make the scheme complete.

The ACTING CHAIRMAN: I suppose you feel that if there is this ultimate power in the court it might make creditors a little more reasonable in coming to a voluntary composition—voluntary with a gun at their head?

Mr. REILLEY: It might help.

Hon. Mr. HAIG: It positively would help. There is no question about what would happen.

Mr. REILLEY: After all, you have first an investigation by a committee who have examined and investigated the situation and passed their opinion on it.

Hon. Mr. MORAUD: But the judge could do away with that opinion, take other evidence and decide that the bondholders had no claim whatever, or that they were not in a better position than ordinary shareholders.

Hon. Mr. EULER: I can well imagine, Mr. Chairman, that it might have the same effect as the Farmers Creditors' Arrangement Act had in Ontario. That Act worked to the detriment of the farmer himself, because no man would put his money in a farm mortgage if it could be partly wiped out. Who would want to buy a bond if it were in the power of a judge later on to say, "Your bond is not worth anything?"

Hon. Mr. HAIG: The only money lent on farm mortgages in Manitoba is by the Farm Loans Board. The private companies are not lending at all.

Mr. REILLEY: The Farmers Creditors' Arrangement Act is not in operation in Ontario and Quebec.

Hon. Mr. HAIG: But it scared them; they have had experience.

Hon. Mr. EULER: That is why it was wiped out here. Only Manitoba enacted the Act again. We defeated the bill by an amendment providing for right of appeal to a judge. Next year the government came back with a similar bill embodying our amendment.

Hon. Mr. HAIG: But it is not worked the same now as it was before.

The ACTING CHAIRMAN: Let us stick to his bill, gentlemen.

Mr. REILLEY: Before I go any further, gentlemen, I want to say this. These are my suggestions. I am not married to any or all of them, and I do not care what the committee does in regard to them.

The ACTING CHAIRMAN: But you stand up to them. We want to hear your considered opinion.

Mr. REILLEY: Certainly. But I am not going to be hurt or feel badly because the committee say, "We don't think this provision is good." I want the committee to understand that so far as I am concerned.

The ACTING CHAIRMAN: On the other hand, the committee want you to give your opinion and all the reasons for it without any qualification whatever, because we have to form our opinion on that basis.

Mr. REILLEY: Is there anything more we need say about this?

The ACTING CHAIRMAN: Do you want to say anything more?

Mr. REILLEY: No.

The ACTING CHAIRMAN: What is the next question?

Mr. REILLEY: The next question discussed was decentralization.

The ACTING CHAIRMAN: We are going to leave that for a memorandum from you. (See memo. at end of proceedings.) There is nothing complicated about that. You could dictate that later. What is the next important heading?

Mr. REILLEY: In principle the next change I am suggesting is that an application for discharge of a debtor should come up automatically before the courts within a certain time after his bankruptcy.

Hon. Mr. MORAUD: Discharge of the debtor, not of the trustee?

Mr. REILLEY: Yes. In the last twenty-five years I don't suppose that 20 per cent of all those who have gone bankrupt have ever applied for their discharge. There are two reasons for that. In many cases they do not know the situation, and that is accentuated by the fact that the highest courts have held that future assets—which include earnings—may be taken possession of in order to try to pay off the creditors. The result is that in many of these cases the debtor, if he gets a job and is earning more than a bare living, is faced with this proposition, that the trustee can step in and claim through the court a certain amount of his earnings. The debtor then is never in the position of being able to apply for his discharge. While it has often been regarded as important that the creditors should obtain an equitable distribution of the debtor's assets, yet the fundamental principle of bankruptcy is that we have to give the honest unfortunate debtor an opportunity to rehabilitate himself.

Hon. Mr. HAIG: Hear, hear.

Mr. REILLEY: He cannot do that if he is perpetually in bankruptcy.

Hon. Mr. HAIG: That is right.

Mr. REILLEY: My idea is that within a certain period, six months after his bankruptcy, his application for discharge should come up before the courts.

Hon. Mr. COPP: Within a certain time?

Mr. REILLEY: Within a certain time. There are two reasons for that. The first is that the debtor and the creditors are then interested in the bankruptcy, particularly the creditors. Notices of applications for discharge are coming into my office of debtors who went bankrupt twenty years ago. Where is there a creditor to-day to receive notice of that or anything else? Under this pr[illegible] the matter will be dealt with when the creditors are interested in the d[illegible]'s affairs, and they will be alive to the situation and know something about it. Otherwise if the bankruptcy goes on for a few years the creditors just write the debt off their books and count it a dead loss, and never bother about it any more. In the second place, if the application for discharge comes up early the case will be dealt with more properly on its merits. If the debtor has been unfortunate, why, the court will deal with the application on its merits, the interested creditors will be able to make representations, and if they think the debtor can do something better, or that his application should be suspended, the court will deal with it as it sees fit.

Hon. Mr. KINLEY: Are there any necessary preliminary qualifications for discharge, must the debtor pay so much of a percentage of his debts, before he goes to the court?

Mr. REILLEY: No, none at all.

Hon. Mr. KINLEY: There used to be.

Mr. REILLEY: No. The court can discharge a debtor who has not paid anything.

Hon. Mr. MORAUD: You don't make it easy for the debtor if he has to apply within six months, for the creditors will not be very keen on his getting a discharge. But a few years later the creditors—

Mr. REILLEY: Have cooled off.

Hon. Mr. MORAUD: —and then it is easier to get a discharge. If you force a debtor to apply for discharge while the creditors are still sore, there is not a chance that he will get it.

Mr. REILLEY: It is not forced on him.

Hon. Mr. LEGER: By section 146 the fact that the debtor has assigned or become bankrupt is taken as notice to the creditors that he will within six months apply for his discharge. Then there is a duty cast upon the trustee to bring the matter up before the court, unless the debtor has waived that himself.

Hon. Mr. MORAUD: It is not the obligation but the privilege of the debtor.

Hon. Mr. LEGER: Yes. I read that with a great deal of interest. The principle is very good.

Hon. Mr. HAIG: Is six months too short?

Mr. REILLEY: I do not think so. In the ordinary case six months gives the trustee a reasonable opportunity to know where he is going to finish up or how the estate is going to end up. At the same time, it is not so long that the creditors have lost interest in the matter. That was one of my reasons for this. I wanted the application for discharge to come up before the creditors had lost interest, because I know lots of discharges are going through today, though my records show that the debtors had committed fraud, just because no creditors have showed up to contest the applications.

Hon. Mr. EULER: Do creditors ever lose interest in what is going on with respect to their debtors?

Hon. Mr. COPP: Take this case, Mr. Reilley. The debtor assigned, went through the bankruptcy court, his property was all sold at public auction, the trustee carried on and paid out dividends on the assets so realized, but the debtor never got his discharge. That bankruptcy, we will say, happened fifteen years ago. Now, assuming that the debtor gets on his feet again, makes some money and accumulates an estate, can the creditors come in and demand additional dividends or does the statute of limitations apply?

Mr. REILLEY: The creditors can also come in again and repossess anything that the debtor has now got. But here is something that I consider almost ludicrous in the Act today. A case recently came before me in which a second bankruptcy occurred. The bankrupt had gone into business again and failed. It is not at all uncommon for a man to go into bankruptcy two or three times. But as the Act now stands, the creditors in the first bankruptcy are entitled to take all the assets now found before the creditors in the second bankruptcy get a cent.

Hon. Mr. COPP: Irrespective of the statute of limitations?

Mr. REILLEY: In case he never had a discharge.

Hon. Mr. COPP: I had such a case come before me and I was very much interested in what might happen.

The ACTING CHAIRMAN: That should be rectified even though there was no discharge.

Mr. REILLEY: Yes. I have a provision here for bringing it into line with the English Act dealing with a second bankruptcy, so all creditors come into the

picture. In the case I have referred to those old creditors who had washed the thing out of their books ten years ago now find themselves in the position of collecting whatever is in the hands of the trustee of the second bankruptcy.

Hon. Mr. Copp: My client came to me for advice. Now, after fifteen years, he wants to apply to be released.

Hon. Mr. Haig: He can get his discharge.

Hon. Mr. Copp: I advised him that he had better leave sleeping dogs lie. The creditors had not said anything. Now on his application for discharge they might find he had in the meantime accumulated some means and make a further claim on him.

Mr. Reilley: That probably might be good advice from his angle. There is nothing to prevent his creditors stepping in at any moment and taking every dollar he has got.

Hon. Mr. Copp: That is what I was afraid of.

Mr. Reilley: He is working under that hazard all the time.

The Acting Chairman: I think that is all we need on that point; the details we will consider later. Anything else?

Mr. Reilley: I am suggesting that in certain respects the functions of the superintendent be broadened to be more in line with the English Act.

The Acting Chairman: In what way?

Mr. Reilley: Particularly in regard to the winding up of the estate. When our statute was passed there was no superintendent to act in the same capacity as the Board of Trade in England acts through the Inspector General of Bankruptcy. Consequently in our legislation the matter of dealing with discharge of the trustee was placed before the court, whereas under the British legislation it is dealt with by the Inspector General of Bankruptcy. It has to do with checking up on the statements of the trustee, and so on. I am suggesting that it should be done in that way here, that instead of going to the court for his release the trustee should come to me, and my branch would deal with it and send out notices to the creditors. Any creditor objecting would have the opportunity to apply to the court against the trustee's discharge.

One reason for my suggestion is this. In order to follow through the administration of an estate we have to check through the trustee's final statement and do everything that has to be done by the court in order to know whether the trustee has finished his job. It is only a duplication of my work for the purpose of going to the court anyway. For a long time the courts in one province always put its approval in this form: Seeing the superintendent has approved the statement, we hereby approve it. That is the way it went through. Then another change I propose will be found towards the end of the bill. It starts with section 196, and is headed Summary Administration.

Hon. Mr. Leger: That has to do with small estates not worth the attention of the court. I have read the sections under that heading and see nothing objectionable in them.

Hon. Mr. Haig: What is the limit?

Hon. Mr. Leger: The limit is $500.

Hon. Mr. Haig: Oh, let it go.

Mr. Reilley: Small estates would be dealt with summarily. The registrar of the court would act as the trustee and turn the limited assets over to the sherriff to realize and hand the returns back for distribution among the creditors. That would be the end of it. A great many debtors cannot find the means to go through bankruptcy because they cannot get a trustee to handle their estate. The trustee is allowed a minimum fee of $100, as provided for in the Act fifteen years ago, and with the expenses it costs any debtor, no matter how poor a wage-

earner he may be, at least $150. Under this scheme it ought not to cost him more than $25.

Hon. Mr. HAIG: May I tell you, Mr. Reilley, that about 1931 the Manitoba Legislature passed a somewhat similar amendment. It enables a poor man to apply to the county court, and there his application is disposed of summarily and at small expense. I presume this is somewhat the same provision?

Mr. REILLEY: I had not heard of that.

Hon. Mr. HAIG: It is in the 1930 or 1931 statutes of that province.

The ACTING CHAIRMAN: Gentlemen, I suggest that we have pretty well covered the essentials. Mr. Reilley will always be available if we require his attendance again.

Hon. Mr. HAIG: Yes.

Mr. Reilley then withdrew.

MEMORANDUM by MR. REILLEY

The new Bankruptcy Act embodies certain changes in principle and procedure. One of the most important changes in principle is that relating to decentralization of the Courts. Under Section 152 of the Bankruptcy Act heretofore the Superior Courts throughout the various provinces were vested with jurisdiction in bankruptcy matters. Under Section 157 it was left to the Chief Justices of each of such Courts "to appoint and assign such registrars, clerks and other officers in bankruptcy as is deemed necessary or expedient for the transaction or disposal of matters in respect of which power or jurisdiction is given by this Act and may prescribe or limit the territorial jurisdiction of any such registrar, clerk or any other officers". The powers thereby conferred have been exercised by the various Chief Justices in a very different manner. In some provinces the registrars, clerks or prothonotaries of the ordinary Civil Courts were appointed registrars in bankruptcy within their respective territorial jurisdictions. In other provinces the Chief Justice saw fit to appoint only one or a lesser number of such registrars, clerks or prothonotaries as registrars in bankruptcy with the result that all court proceedings had to be begun where the office of such registrar was located. The object of restricting such appointments obviously was to endeavour to have more uniformity in bankruptcy court proceedings.

From my observations of the operations of the Act during the last thirteen years since the office of the Superintendent of Bankruptcy was established it would appear that it is desirable that bankruptcy courts be established on a basis more convenient to the public at large and that there is now no valid reason why bankruptcy matters could not be heard and disposed of in the same manner as the business of the ordinary Civil Courts is carried on. Judicial precedents have settled many of the uncertainties and ambiguities that arose naturally on the introduction of the Bankruptcy Act in 1920 and it is believed that is would be in the best interest of the bankruptcy administration that the facilities of all the Superior Courts throughout the Country be made available in bankruptcy matters. The Criminal Code, the Winding Up Act and other federal legislation are so administered within such Courts and there is no suggestion that it should be otherwise. It would seem not to be unreasonable that bankruptcy matters be dealt with in the same way. The intended change is that the registrars, clerks or prothonotaries within their respective judicial districts should hereafter be registrars in bankruptcy for all the purposes of the Bankruptcy Act.